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Examiner Name	Young, Janelle
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Intel Corporation		
Signature	/John F. Travis/		
Printed name	John F. Travis		
Date	September 18, 2008	Reg. No.	43,203

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Signature	/Jenny Kathman/		
Typed or printed name	Jenny Kathman	Date	September 18, 2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	Adrian P. Stephens.	)	
		)	
Serial No.	10/796,756	)	
		)	
Filed:	March 8, 2004	)	
		)	
Title:	Adaptive Transmit Power Control In Wireless Devices	)	Group Art: 2618 Examiner: Young, Janelle

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APPEAL BRIEF

IN SUPPORT OF APPELLANT'S APPEAL

TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

Sir:

Pursuant to the Notice of Appeal, filed by Appellant August 7, 2008, Appellant hereby submits this Appeal Brief in support of his Appeal from the Final Action dated March 17, 2008. Appellant respectfully requests consideration of this Appeal by the Board of Patent Appeals and Interferences for allowance of the claims in the above-captioned patent application.

I. REAL PARTY IN INTEREST

The invention is fully owned by Intel Corporation of 2200 Mission College Boulevard, Santa Clara, California 95052.

II. RELATED APPEALS AND INTERFERENCES

To the best of Appellant's knowledge, there are no appeals or interferences related to the present appeal that will directly affect, be directly affected by, or have a bearing on the Board's decision.

III. STATUS OF CLAIMS

Claims 1-27 are pending in the application. Claims 1-27 have been rejected. Appellants believe this is a final rejection, based on paragraph 2 of the most recent Office action (mailed March 17, 2008). However, in the Office Action Summary of that same Office action, both the Final and Non-Final blocks (blocks 2a and 2b) are checked, making the final status of the rejection somewhat ambiguous. In addition, the Office Action Summary stated that it was in response to Appellant's amendment filed June 24, 2007. However, Appellant filed a subsequent response on December 6, 2007, and that response contained amendments to the claims. In a later response mailed May 5, 2008, Appellant requested the Examiner to clarify whether the Office action of March 17, 2008 was final or non-final, and to clarify which set of claims were being rejected (the claims as they existed after Appellant's response of June 24, 2007, or the claims as they existed after Appellant's response of December 7, 2007). No

clarification from the Examiner was ever received. A subsequent communication from the Examiner was received in the form of an Advisory Action mailed August 1, 2008. However, this Advisory Action did not address either of Appellant's questions.

IV. STATUS OF AMENDMENTS

Appellant is unsure if the amendment filed December 6, 2007 was entered, for the reasons given in Section III above. The claims were not amended in Appellant's responses filed June 24, 2007, or May 5, 2008, so only the amendment filed December 6, 2007 is in question. Appellant is proceeding under the assumptions that 1) the Office action mailed March 17, 2008 is a final rejection, and 2) the claims as presented in Appellant's response mailed May 5, 2008 (they incorporate the amendment of December 6, 2007) are the claims being addressed in that final rejection. This Appeal Brief is based on those assumptions, even though the Examiner has not verified either assumption. If either of these assumptions is incorrect, Appellant respectfully requests that the Examiner be required to deliver another Office action, with appropriate 3- and 6-month deadlines for response, clarifying the final/non-final status of the most recent rejection, and clarifying the amendment status of the claims. However, in the interest of furthering prosecution, if both these assumptions are true, Appellant wishes this appeal to continue through the normal appeal process within the USPTO, without being returned to Appellant just to clarify those two issues.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Embodiments of the present invention generally relate to a communications device (for example, device 441 in Fig. 4) in a wireless communications network (for example, the communications network in Fig. 4, containing AP 410 and wireless communications devices 441, 442, 443, and 444), in which the device makes two different transmissions, each at a different power level, and determines the amount of communications in the network after each transmission. The device may then select one of those two power levels for a subsequent transmission, based on the amount of network communications that resulted after each.

The subject matter of independent claims 1, 8, 12, 16, and 22 is mapped below to specific portions of the specification and drawings. The specific language of each claim is underlined. Each of the remaining pending claims depends directly or indirectly from one of these independent claims. For the purposes of this Appeal, each rejected dependent claim will stand or fall based on the status of its associated independent claim. In the following text, please note that <u>line numbers are counted from the beginning of the stated paragraph, not from the top of the page</u>).

Referring to Appellant's **independent Claim 1**, a method is claimed which includes:

1) <u>performing, within a mobile station in a wireless communications network, operations of:</u> the mobile station may be, for example, STA 431 in Fig. 4, described at lines 1-3, 6-8, and 12-13 of paragraph 0023

2) <u>transmitting data at a first transmit power level;</u> block 220 of Fig. 2, described at lines 10-12 of para. 0016

3) <u>determining a first value for a network traffic parameter at the first transmit power level;</u> block 220 of Fig. 2, described at lines 10-12 of para. 0016

4) <u>determining a second power level different than the first power level;</u> blocks 230 or 250 of Fig. 2, described at line 5 of para. 0017 or line 5 of para. 0018

5) <u>transmitting data at the second transmit power level;</u> block 230 or 250 of Fig. 2, described at line 5 of para. 0017 or line 5 of para. 0018

6) <u>determining a second value for the network traffic parameter at the second transmit power level;</u> blocks 230, 235 or 250, 255 of Fig. 2, described at line 6 of para. 0017 or lines 5-6 of para. 0018

7) <u>wherein the network traffic parameter is based on a volume of communications observed by the mobile station</u>. "throughput", described in blocks 230, 235 or 250, 255 of Fig. 2, described at line 6 of para. 0017 or lines 5-6 of para. 0018. Also defined in lines 3-4 of para. 0015 as an amount of data transmitted over a period of time.

Referring to Appellant's **independent Claim 8**, an article is claimed which includes:

1) <u>a machine-readable medium that provides instructions, which when executed by a computing platform, cause said computing platform to perform operations comprising:</u> para. 0011

2) <u>transmitting data at a first transmit power level;</u> block 220 of Fig. 2, described at lines 10-12 of para. 0016

3) determining a first data throughput value based on transmissions at the first transmit power level; block 220 of Fig. 2, described at lines 10-12 of para. 0016

4) transmitting data at a second transmit power level different than the first transmit power level; block 230 or 250 of Fig. 2, described at line 5 of para. 0017 or line 5 of para. 0018

5) determining a second data throughput value based on transmissions at the second transmit power level; blocks 230, 235 or 250, 255 of Fig. 2, described at line 6 of para. 0017 or lines 5-6 of para. 0018

6) setting a subsequent transmit power level at one of the first transmit power level and the second transmit power level, based on a comparison between the first and second data throughput values; blocks 235, 240 or 255, 260 of Fig. 2, described at lines 6-14 of para. 0017 or lines 6-14 of para. 0018

7) wherein all the operations of transmitting, determining, and setting are performed within a wireless mobile station. STA 431 of Fig. 4, described at lines 1-3, 6-8, and 12-13 of paragraph 0023

Referring to Appellant's **independent Claim 12**, an article is claimed which includes:

1) a machine-readable medium that provides instructions, which when executed by a computing platform, cause said computing platform to perform operations comprising: para. 0011

2) setting a first transmit power level; block 210 of Fig. 2, described at lines 1-2 of para. 0016

3) transmitting data at the first transmit power level; block 220 of Fig. 2, described at lines 10-12 of para. 0016. Also block 310 of Fig. 3, described at lines 1-2 of para. 0020.

4) determining a first network loading value based on data transmitted at the first transmit power level; block 310 of Fig. 3, described at lines 1-2 of para. 0020

5) comparing the network loading value with a predefined range of network loading values; block 320 or 340 of Fig. 3, described at lines 1-3 of para. 0021

6) changing the transmit power level for a subsequent transmission of data based on a result of said comparing; block 330 or 350 of Fig. 3, described at lines 1-4 of para. 0021

7) wherein each operation of setting, transmitting, determining, comparing, and changing is performed within a wireless mobile station. STA 431 of Fig. 4, described at lines 1-3, 6-8, and 12-13 of paragraph 0023

Referring to Appellant's **independent Claim 16**, an apparatus is claimed which includes:

1) a wireless device adapted to: STA 431 of Fig. 4, described at lines 1-3, 6-8, and 12-13 of paragraph 0023

2) determine a first transmit power level; block 210 of Fig. 2, described at lines 1-2 of para. 0016

3) transmit data at the first transmit power level; block 220 of Fig. 2, described at lines 10-12 of para. 0016

4) determine a first value for a network traffic parameter based at least in part on transmissions at the first transmit power level; block 220 of Fig. 2, described at lines 10-12 of para. 0016

5) <u>determine a second transmit power level different than the first transmit power level;</u> blocks 230 or 250 of Fig. 2, described at line 5 of para. 0017 or line 5 of para. 0018

6) <u>transmit data at the second transmit power level;</u> block 230 or 250 of Fig. 2, described at line 5 of para. 0017 or line 5 of para. 0018

7) <u>determine a second value for the network traffic parameter based at least in part on transmissions using the second transmit power level;</u> blocks 230, 235 or 250, 255 of Fig. 2, described at line 6 of para. 0017 or lines 5-6 of para. 0018

8) <u>wherein the network traffic parameter is based on an observed volume of communications;</u> "throughput", described in blocks 230, 235 or 250, 255 of Fig. 2, described at line 6 of para. 0017 or lines 5-6 of para. 0018. Also defined in lines 3-4 of para. 0015 as an amount of data transmitted over a period of time

9) <u>wherein each operation of determining and transmitting is to be performed in a mobile wireless device.</u> STA 431 of Fig. 4, described at lines 1-3, 6-8, and 12-13 of paragraph 0023

Referring to Appellant's **independent Claim 22**, a system is claimed which includes:

1) <u>a mobile wireless device comprising an omnidirectional antenna, the mobile wireless device adapted to:</u> STA 431 and antenna 441 of Fig. 4, described at lines 1-3, 6-8, and 11-13 of paragraph 0023

2) <u>determine a first transmit power level;</u> block 210 of Fig. 2, described at lines 1-2 of para. 0016

3) <u>transmit data at the first transmit power level;</u> block 220 of Fig. 2, described at lines 10-12 of para. 0016

4) <u>determine a first value for a network traffic parameter based at least in part on transmissions at the first transmit power level;</u> block 220 of Fig. 2, described at lines 10-12 of para. 0016

5) <u>determine a second transmit power level different than the first transmit power level;</u> blocks 230 or 250 of Fig. 2, described at line 5 of para. 0017 or line 5 of para. 0018

6) <u>transmit data at the second transmit power level;</u> block 230 or 250 of Fig. 2, described at line 5 of para. 0017 or line 5 of para. 0018

7) <u>determine a second value for the network traffic parameter based at least in part on transmissions using the second transmit power level;</u> blocks 230, 235 or 250, 255 of Fig. 2, described at line 6 of para. 0017 or lines 5-6 of para. 0018

8) <u>wherein the network traffic parameter is based on an observed volume of communications.</u> "throughput", described in blocks 230, 235 or 250, 255 of Fig. 2, described at line 6 of para. 0017 or lines 5-6 of para. 0018. Also defined in lines 3-4 of para. 0015 as an amount of data transmitted over a period of time.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether the Examiner erred in rejecting claims 1-27 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,122,265 (hereinafter "Nakamura") and U.S. Patent No. 6,498,785 (hereinafter "Derryberry"), in view of U.S. Patent No. 6,141,565 ("hereinafter Feuerstein").

VII. ARGUMENT

Claims 1, 8, 12, 16, and 22 are each Patentable Over Nakamura and Derryberry in view of Feuerstein

The Office Action dated March 17, 2008 has failed to present a prima facie case of obviousness for Appellant's claims. Quite simply, the cited references, even when combined, do not contain every element of any of Appellant's independent claims, as the following analysis shows.

Overview

Independent Claims 1, 8, 12, 16, and 22 each recite, in various language, that a wireless mobile device transmits at two different power levels, determines a network parameter after each transmission, and uses those parameters to set a subsequent transmission power setting. Different claims specify different particular parameters for this process. In **claims 1, 16, and 22**, the parameter is a network parameter based on an observed volume of communications. In **claim 8**, the parameter is data throughput. In **claim 12**, the parameter is network loading. In each of these cases, the parameter involves the amount of data being communicated in the network. Although some of the cited references discuss adjusting transmit power, the closest they seem to come to the claimed limitations is in adjusting power based on the quality of the signal (e.g., error rate), not the amount of data that is communicated. A network can experience a high error rate without affecting the amount of data the network is handling. Similarly, a network can be able to handle a high or low amount of data, regardless of whether the

error rate is high or low. The two types of parameters (amount of data vs. quality of signal) are not the same, and they have different effects on the network.

Detailed analysis

Independent claims 1, 16, and 22. The parameter that is being monitored after each wireless transmission, and that is used to determine transmission power setting for a subsequent wireless transmission, is a network parameter based on an observed volume of communications. On pages 2-3 of the Office action mailed March 17, 2008, the rejection of these claims is based on Nakamura, Derryberry, and Feuerstein. These are each addressed below:

Nakamura: In the lower one-third of page 2 in the Office action, the rejection states that Nakamura teaches a method for "adaptive transmit power control in wireless devices . . . .` based on an observed volume of communications", in col. 4 line 48 – col. 5 line 6. But a careful review of this passage reveals no mention of transmit power control, nor any mention of an observed volume of communications. Although Nakamura talks frequently about detecting errors in the transmission (e.g., col. 6 lines 46-48), Appellants' claims are completely detached from any measurement of errors. The only mention of power control in Nakamura seems to be when Nakamura transmits power control information to the base stations (e.g., col. 11 lines 13-18). But transmitting power control information is not a part of Appellants claimed invention.

Derryberry: In the paragraph spanning pages 2 and 3 of the Office action, the rejection states that Derryberry teaches the act of transmitting at two different power levels and determining a value for a network traffic parameter for the first power level. But the rejection does not address the limitation of determining the network traffic parameter for the second power level, and also does not address the limitation that all

the operations take place within a single mobile station. In Derryberry, a device transmits at one power level, and is told by the receiving device how to adjust its transmit power level, based on the signal level at the receiving device (col. 2 lines 34-51). Derryberry's power control technique requires two devices: a first device to transmit, and a second device to tell the first device how to adjust the transmit power level in the first device. This is a significantly different process than that recited in Appelant's claims, in which a single network device decides which way to adjust its own transmit power level.

Feuerstein: The rejection admits, near the top of page 3, that Derryberry does not teach observing a volume of communications, then relies on Feuerstein to provide this missing limitation. But Feuerstein, while monitoring data throughput and various other network parameters (col. 3 line 4), sends this information to a centralized site (col. 2 lines 38-44), which makes "globally optimum" decisions at that centralized site and transmits adjustments to the various network devices to change their operating parameters (col. 3 lines 40-46.)

To summarize, the mobile station of Appellant's claimed invention adjusts its own transmit power level, by its own decision, based on the amount of data flowing in the network. Nakamura, Derryberry, and Feuerstein, to the extent that they adjust transmit power levels, do so by having one device direct another device to adjust its power level. None of the cited references teaches having a single device decide to adjust its own transmit power level.

B. Independent claims 8, 12. For comparison with the cited references, claims 8 and 12 are similar to claims 1, 16, and 22, except that in claim 8 the network

parameter is "data throughput" and in claim 12 the network parameter is "network loading". However, in both these claims, the mobile station still makes its own decision to set its own transmit power level, rather than having that power level dictated to it by another device.

Accordingly, for at least the foregoing reasons, Nakamura, Derryberry, and Feuerstein fail to teach all the limitations of any of the independent claims 1, 8, 12, 16, and 22, and therefore also fail to teach the limitations of any of the pending dependent claims. The rejection of these claims under 35 USC 103(a) is thus unsupported, and should be withdrawn.

Note: While preparing this Appeal Brief, Appellant noticed that the preambles of dependent claims 25, 26, and 27 each recite an "apparatus" in the preamble, when they should recite a "system". An amendment to correct this previously-unnoticed typographical error will be made at the next opportunity for amendment. This does not affect the current Appeal, which is based on the independent claims.

Conclusion

Appellant respectfully submits that all the pending claims in this patent application are patentable and request that the Board of Patent Appeals and Interferences overrule the Examiner and direct allowance of the rejected claims.

If any fee insufficiency or overpayment is found, please charge any insufficiency or credit any overpayment to Deposit Account No. 02-2666.

Note: Appendices VIII, IX, and X (Claims, Evidence, and Related Proceedings) are on the pages immediately following this page.

Respectfully submitted,

Intel Corporation

Date: September 18, 2008 /John F. Travis/

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VIII. CLAIMS APPENDIX

1. (previously presented) A method, comprising

performing, within a mobile station in a wireless communications network, operations of:

transmitting data at a first transmit power level;

determining a first value for a network traffic parameter at the first transmit power level;

determining a second power level different than the first power level;

transmitting data at the second transmit power level;

determining a second value for the network traffic parameter at the second transmit power level;

wherein the network traffic parameter is based on a volume of communications observed by the mobile station.

2. (original) The method of claim 1, wherein said determining a first value comprises determining a first throughput value and said determining a second value comprises determining a second throughput value.

3. (original) The method of claim 2, further comprising subsequently transmitting data at the second transmit power level responsive to one of:

the second transmit power level being less than the first transmit power level and the second throughput value being approximately equal to the first throughput value; and

the second transmit power level being greater than the first transmit power level and the second throughput value being greater than the first throughput value.

4. (original) The method of claim 2, further comprising subsequently transmitting data at the first transmit power level responsive to one of:

the second transmit power level being less than the first transmit power level and the second throughput value not being approximately equal to the first throughput value; and

the second transmit power level being greater than the first transmit power level and the second throughput value not being greater than the first throughput value.

5. (original) The method of claim 1, wherein said determining a first value comprises determining a first network loading value and said determining a second value comprises determining a second network loading value.

6. (original) The method of claim 5 wherein said determining a second transmit power level comprises determining a second transmit power level less than the first transmit power level responsive to the first network loading value being less than a target value.

7. (original) The method of claim 5, wherein said determining a second transmit power level comprises determining a second transmit power level greater than the first transmit power level responsive to the first network loading value being greater than a target value.

8. (previously presented) An article comprising

a machine-readable medium that provides instructions, which when executed by a computing platform, cause said computing platform to perform operations comprising:

transmitting data at a first transmit power level;

determining a first data throughput value based on transmissions at the first transmit power level;

transmitting data at a second transmit power level different than the first transmit power level;

determining a second data throughput value based on transmissions at the second transmit power level; and

setting a subsequent transmit power level at one of the first transmit power level and the second transmit power level, based on a comparison between the first and second data throughput values;

wherein all the operations of transmitting, determining, and setting are performed within a wireless mobile station.

9. (original) The medium of claim 8, wherein:

the second transmit power level is less than the first transmit power level, and

said setting comprises setting the subsequent transmit power level to the second transmit power level responsive to determining the second data throughput value is approximately equal to the first data throughput value.

10. (original) The medium of claim 8, wherein:

the second transmit power level is greater than the first transmit power level, and

said setting comprises setting the subsequent transmit power level to the second transmit power level responsive to determining the second data throughput value is greater than the first data throughput value.

11. (original) The medium of claim 8, wherein the first and second transmit power levels are each less than a predefined maximum transmit power level and greater than a predefined minimum transmit power level.

12. (previously presented) An article comprising

a machine-readable medium that provides instructions, which when executed by a computing platform, cause said computing platform to perform operations comprising:

setting a first transmit power level;

transmitting data at the first transmit power level;

determining a first network loading value based on data transmitted at the first transmit power level;

comparing the network loading value with a predefined range of network loading values; and

changing the transmit power level for a subsequent transmission of data based on a result of said comparing;

wherein each operation of setting, transmitting, determining, comparing, and changing is performed within a wireless mobile station.

13. (original) The medium of claim 12, wherein said changing comprises decreasing the transmit power level for the subsequent transmission responsive to the network loading value being less than a minimum value in the predefined range.

14. (original) The medium of claim 12, wherein said changing comprises increasing the transmit power level for the subsequent transmission responsive to the network loading value being greater than a maximum value in the predefined range.

15. (original) The medium of claim 12, wherein said changing comprises one of:

increasing the transmit power level for the subsequent transmission responsive to the network loading value being greater than a predefined value; and

decreasing the transmit power level for the subsequent transmission responsive to the network loading value being less than the predefined value.

16. (previously presented) An apparatus comprising

a wireless device adapted to:

determine a first transmit power level;

transmit data at the first transmit power level;

determine a first value for a network traffic parameter based at least in part on transmissions at the first transmit power level;

determine a second transmit power level different than the first transmit power level;

transmit data at the second transmit power level; and

determine a second value for the network traffic parameter based at least in part on transmissions using the second transmit power level;

wherein the network traffic parameter is based on an observed volume of communications;

wherein each operation of determining and transmitting is to be performed in a mobile wireless device.

17. (original) The apparatus of claim 16, wherein:

the network traffic parameter is a data throughput parameter;

the wireless device is further adapted to subsequently transmit data at the second transmit power level responsive to the second transmit power level being less than the first transmit power level and the second value being approximately equal to the first value; and

the wireless device is further adapted to subsequently transmit data at the first transmit power level responsive to the second transmit power level being less than the first transmit power level and the second value not being approximately equal to the first value.

18. (original) The apparatus of claim 17, wherein:

the wireless device is further adapted to subsequently transmit data at the second transmit power level responsive to the second transmit power level being greater than the first transmit power level and the second value being greater than the first value; and

the wireless device is further adapted to subsequently transmit data at the first transmit power level responsive to the second transmit power level being greater than the first transmit power level and the second value not being greater than the first value.

19. (original) The apparatus of claim 16, wherein:

the network traffic parameter is a network loading parameter; and

the wireless device is further adapted to set the second transmit power level less than the first transmit power level responsive to the first value being less than a first predetermined value.

20. (original) The apparatus of claim 19, wherein the wireless device is further adapted to set the second transmit power level greater than the first transmit power level responsive to the first value being greater than a second predetermined value.

21. (original) The apparatus of claim 20, wherein the first predetermined value is a minimum value in a predetermined range of values and the second predetermined value is a maximum in the predetermined range of values.

22. (previously presented) A system comprising

a mobile wireless device comprising an omnidirectional antenna, the mobile wireless device adapted to:

determine a first transmit power level;

transmit data at the first transmit power level;

determine a first value for a network traffic parameter based at least in part on transmissions at the first transmit power level;

determine a second transmit power level different than the first transmit power level;

transmit data at the second transmit power level; and

determine a second value for the network traffic parameter based at least in part on transmissions using the second transmit power level;

wherein the network traffic parameter is based on an observed volume of communications.

23. (original) The system of claim 22, wherein:

the network traffic parameter is a data throughput parameter;

the wireless device is further adapted to subsequently transmit data at the second transmit power level responsive to the second transmit power level being less than the first transmit power level and the second value being approximately equal to the first value; and

the wireless device is further adapted to subsequently transmit data at the first transmit power level responsive to the second transmit power level being less than the

first transmit power level and the second value not being approximately equal to the first value.

24. (original) The system of claim 23, wherein:

the wireless device is further adapted to subsequently transmit data at the second transmit power level responsive to the second transmit power level being greater than the first transmit power level and the second value being greater than the first value; and

the wireless device is further adapted to subsequently transmit data at the first transmit power level responsive to the second transmit power level being greater than the first transmit power level and the second value not being greater than the first value.

25. (original) The apparatus of claim 22, wherein:

the network traffic parameter is a network loading parameter; and

the wireless device is further adapted to set the second transmit power level less than the first transmit power level responsive to the first value being less than a first predetermined value.

26. (original) The apparatus of claim 25, wherein the wireless device is further adapted to set the second transmit power level greater than the first transmit power level responsive to the first value being greater than a second predetermined value.

27. (original) The apparatus of claim 26, wherein the first predetermined value is a minimum value in a predetermined range of values and the second predetermined value is a maximum in the predetermined range of values.

IX. EVIDENCE APPENDIX

Not Applicable

X. RELATED PROCEEDINGS APPENDIX

Not Applicable